

AGREEMENT FOR INITIAL RENTAL OF CONDOMINIUM
DEVELOPMENT
INCLUDING AFFORDABLE HOUSING REQUIREMENTS

by and between

THE CITY OF SUNNYVALE

and

SOBRATO DEVELOPMENT COMPANY

AGREEMENT

This AGREEMENT FOR INITIAL RENTAL OF CONDOMINIUM DEVELOPMENT INCLUDING AFFORDABLE HOUSING REQUIREMENTS ("Agreement") is entered into this _____ day of _____, 2004 by and between the CITY OF SUNNYVALE, a chartered California municipal corporation ("City") and SOBRATO DEVELOPMENT COMPANY, a California corporation ("Developer"). The City and the Developer agree as follows:

RECITALS

1. The purpose of this Agreement is to enter into a binding agreement with persons having legal or equitable interest in real property for the development of such property, in order to, among other things, increase, improve and preserve the supply of low and moderate income housing in the community.

2. The Developer owns certain real property ("Site") in the City on which the Developer received City approval to construct a two phase multi-unit rental housing project consisting of two hundred seventy one (271) rental units. (SDP 2002-0976; "the Project") The first phase of the Project, consisting of one-hundred twenty three (123) rental units has already been built as of the date of this Agreement ("Phase 1"). This Agreement shall apply to the already-built Phase 1. At such time as Phase 2 is built, the parties agree they will amend this Agreement to include Phase 2, applying the same substantive principles and utilizing the formula for calculating BMR units in effect at the time the building permit for Phase 2 is pulled. As a condition of approving entitlements for construction of Phase 1, the City has required that the Developer designate 10%, or twelve (12), of these rental units as Affordable Housing Units (referred to herein as the "Affordable Housing Units") to be made available for occupancy exclusively by households with incomes at or below 70% of the area median income as defined by the U.S. Department of Housing and Urban Development at below market rate rents. The Developer shall provide as Affordable Housing Units six (6) one bedrooms units and six (6) two bedroom units.

3. Developer now desires to modify City approval of Project entitlements by filing a vesting tentative map to change the nature of the development from rental units to condominium units.

4. Developer would also like to delay the actual sale of the condominium units and maintain them as rental property under a single owner. Furthermore, Developer desires to comply with the City's below market rate housing programs by entering into this Agreement whereby the below market rate rental units shall be transferred to below market rate ownership units at the time the units are sold for owner-occupancy at which time 12.5%, or fifteen (15), of the units shall be sold at below market rate in accordance with the terms of Sunnyvale Municipal Code ("SMC") Chapter 19.66.

AGREEMENT

ARTICLE 1: PROJECT/SITE DESCRIPTION

Section 1.1 The Site; the Project

a. The Site is more particularly described in the Legal Description attached to this Agreement as Attachment No. 1.

b. The Project is a three story, 271 unit residential complex on two adjacent lots, originally approved as an apartment complex to be built in two phases. Phase 1 includes the construction of 123 units in seven buildings. Phase 2 includes the construction of 148 units in nine buildings. After Phase 1 was constructed, Developer modified the Project by filing a map to convert it to condominiums. As of the date of this Agreement, no work on Phase 2 has commenced.

Section 1.2 The City

a. The City is a chartered California municipal corporation, exercising governmental functions and powers, and organized and existing under the laws of the State of California.

b. The designated representative and address of City for purposes of notice hereunder is the Community Development Director, Sunnyvale City Hall, 456 West Olive Avenue, Sunnyvale, CA 94088.

c. City as used in this Agreement includes the City of Sunnyvale, California and any assignee of or successor to its rights, powers and responsibilities.

Section 1.3 The Developer

a. The Developer is Sobrato Development Company, a California corporation.

b. The address of Developer for purposes of receiving notices pursuant to this Agreement is 10600 N. De Anza Boulevard, Cupertino, CA 95014.

c. Wherever the term Developer is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

Section 1.4 Prohibition against Assignment of this Agreement

a. The qualifications and identity of the Developer are of particular concern to the City. It is because of those qualifications and identity that the City has entered into this Agreement with the Developer. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement.

b. During the period of time Developer operates the Project as rental property, the Developer shall not assign or attempt to assign all or any part of this Agreement without prior written City approval. Consent by City shall not be unreasonably withheld.

c. If the Developer assigns or attempts to assign all or any part of this Agreement in violation of this Agreement, the City may terminate this Agreement and exercise any available remedies.

d. No unauthorized assignment hereunder shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

ARTICLE 2: USE OF THE SITE

Section 2.1 General Use

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, that Developer, its successors and assignees shall develop the Project on the Site and use the Site for the development and occupancy of residential dwelling units, as provided in the Approved Plans.

Section 2.2 Use as Rental Property

a. Developer agrees that all the units initially shall be made available for rental housing. During the period of time the Site is made available as rental housing, Developer shall reserve twelve units as Affordable Housing Rental Units. (As noted above, this Agreement applies to the currently constructed Phase 1. At such time as Phase 2 is constructed, it will be modified to include and encompass the additional units provided by Phase 2.) When Phase 1 converts to actual for-sale ownership units, Developer shall sell fifteen (15) units as Below Market Rate units at an affordable housing price. The specific fifteen units to be sold as below market rate units are designated in Section 2.4 below. In order to provide full disclosure to any prospective tenants, the following notices must be provided prior to acceptance of any rent or deposit:

1. For rental units which are **not** designated as below market rate units, the following notice must be provided:

**NOTICE TO PROSPECTIVE TENANTS OF INTENT TO CONVERT TO
CONDOMINIUMS**

To the prospective occupant(s) of:

(address)

The owner(s) of this building at (address), have received a tentative map with the City of Sunnyvale to convert this building to a condominium no sooner than _____ (date). You will be notified at least 180 days prior to the actual conversion. Further, if you still reside in your unit, you will be given an exclusive right to purchase your unit.

(Signature of Owner or Owner's Agent)

(dated)

I have received this notice on _____

(date)

(prospective tenant's signature)

2. For the fifteen units which are designated as below market rate ownership units, the following notice must be provided:

**NOTICE TO PROSPECTIVE TENTANTS OF INTENT TO CONVERT TO
CONDOMINIUMS, DESIGNATED BELOW MARKET RATE UNIT**

To the prospective occupant(s) of:

(address)

The owner(s) of this building at (address), have received a tentative map from the City of Sunnyvale to convert this building to a condominium, no sooner than (date). You will be notified at least 180 days prior to the actual conversion. In accordance with the City of Sunnyvale's affordable housing program, this unit has been designated to be sold as a below market rate affordable housing unit. Only persons who qualify for the City's Affordable Housing Program will be eligible to purchase this unit.

(Signature of Owner or Owner's Agent)

(dated)

I have received this notice on _____
(date)

(prospective tenant's signature)

b. Developer agrees to restrict the occupancy of twelve (12) Affordable Housing Units on Phase 1 as rental units affordable to households at seventy percent or less of area median income. During the term of rental use, the Deed of Trust Securing Rental Restrictions shall be recorded against the property substantially in the form attached hereto as Attachment No. 3, which is incorporated herein by this reference. The Deed of Trust Securing Rental Restrictions shall be binding on Developer and any successor in interest to the Affordable Housing Units or any part thereof for the benefit and in favor of the City. The Deed of Trust Securing Rental Restrictions shall remain in effect for fifty-five (55) years. The Deed of Trust Securing Rental Restrictions shall not be reconveyed to Developer until the Deeds of Trust Securing Ownership Restrictions have been recorded against the individual designated below market rate units as described below

c. The following described rental units are designated as the initial BMR rental units and shall be subject to the terms and conditions of the BMR Program:

1. One bedroom units: 114, 102, 122, 135, 158, 149
2. Two bedroom units: 226, 233, 260, 251, 245, 230

d. This Agreement contemplates that from time to time, the Developer or its successor may designate different units as BMR rentals rather than the units described in subsection "c" above. The changes may be made provided the following conditions are satisfied:

1. The total number of BMR units shall not be less than the 12 initial BMR rental units set forth in this Agreement.
2. All designated BMR units shall be dispersed throughout the project so that the distribution of designated units is substantially the same as set forth in subsection "c" above with at least six (6) one bedroom units and six (6) two bedroom units.
3. Developer or its successor shall send written notification to the Director of Community Development of the City of Sunnyvale of any changes in the designation of BMR units within thirty (30) days of

such change.

e. Because this project was a pipeline project during the BMR Ordinance revision, the City and Sobrato Development have agreed to use a different methodology to determine initial rents than is otherwise written into SMC Chapter 19.66 and the administrative procedures. The agreed upon methodology is as follows:

The initial BMR rent will be based on the market rates of three existing comparable properties (Cherry Orchard, Villa Del Sol and Magnolia Lane) in Sunnyvale for one and two bedroom units. The average rents for one and two bedroom units at these three properties were calculated, less 20% for the BMR rate, as:

1 bedroom: \$1258 per month
2 bedroom: \$1543 per month

Within three months after the initial occupancy of any of the rental units, a Deed of Trust will be recorded and BMR rents will be set utilizing the average actual market rents obtained for the project, less 20%. This will establish the base rent going forward. All other terms for the increase and reduction of rents contained in SMC Chapter 19.66 and the administrative procedures shall apply.

Section 2.3. Transition from Rental Use to Ownership Units; Notice to City; Notice to Tenants.

a. In the future, units within the development may be sold to individual purchasers in accordance with the approved final map and conditions authorizing the development. Developer is required to provide City with written notice of its intent to begin selling individual units at least eighteen (18) months prior to any such sale. In addition, each tenant of a unit within the development shall be given 180 days written notice prior to actual conversion. Such notice shall include an offer of an exclusive right to contract for his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant. In the case of Affordable Housing units, the renter must qualify under the Below Market Rate ownership program. The right shall run for a period of not less than 90 days from the date written notice of actual conversion was sent to the tenant.

b. At such time as Developer actually converts the Site to for-sale condominium units, Developer shall comply with the terms of this Agreement as well as any other tenant notice, assistance and relocation regulations as may be required by then-existing policy, ordinance or statute.

Section 2.4 Use as For-Sale Ownership Property.

a. Following the initial period as rental housing, the fifteen (15) Affordable Housing Units in Phase 1 shall be sold as Below Market Ownership condominium units to be made available at a price not to exceed the purchase price as stated below.

(1) The Designated Sales Price of each Affordable Housing Unit shall be set as follows:

1-bedroom units Designated Sales Price of \$188,074
2-bedroom units Designated Sales Price of \$215,787

(2) Adjustment of the Designated Sales Price shall be determined by City on the basis of annual adjustments equal to one-third of any increase in the housing component of the Bay Area Consumer Price Index published by the Department of Housing and Urban Development, plus the adjusted amount of any substantial capital improvement expenditures consistent with SMC section 19.66.060.

b. The following units shall be designated as below market ownership units:

- (a) One bedroom units: 114, 102, 122, 135, 158, 149 (Plus One More)
- (b) Two bedroom units: 226, 233, 260, 251, 245, 230 (Plus Two More)

This Agreement contemplates that from time to time, BMR rental units may need to be re-designated, as stated in section 2.2, subd. (d), above. Accordingly, the Developer may re-designate the ownership units at the time of sale upon approval by the Housing Officer. However, in no event shall there be less than fifteen (15) units (consisting of 7 one bedroom and 8 two bedroom units) available for BMR ownership and the units shall be evenly distributed throughout the development.

c. Developer agrees that the sale of the 15 designated BMR units shall include the resale restrictions in the Deed of Trust Securing Ownership Restrictions substantially in the form attached hereto as Attachment No. 5.

Section 2.5 Maintenance of the Site

Developer, or its successors in interest, shall maintain the Project on the Site and shall keep the Site in excellent condition and repair free from any accumulation of debris or waste materials. The Developer shall ensure that all units, including below market rate units, are equally maintained in accordance with state and local law.

ARTICLE 3 DEFAULTS, REMEDIES AND TERMINATION

Section 3.1 Default and Termination

City in its reasonable discretion may terminate this Agreement for any failure of Developer to perform any material obligation of Developer, or Developer's failure to comply in good faith with the material terms of this Agreement (hereinafter referred to as "default"); provided, however, City may terminate this Agreement pursuant to this Section only after providing written notice to Developer of default setting forth the nature of the default and the actions, if any, required by Developer to cure such default and, where the default can be cured, Developer has failed to take such actions and cure such default within (90) days after the effective date of such notice or, in the event that such default cannot be cured within such ninety (90) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such ninety (90) day period and to diligently proceed to complete such actions and cure such default.

Section 4.2 Remedies

In any proceeding relating to any issue arising under this Agreement, the parties may mutually agree to mediation of their dispute. Alternatively, either party may, in addition to any other rights or remedies it may have at law or in equity, institute an action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the parties hereto, after exhaustion of administrative remedies.

ARTICLE 4. GENERAL PROVISIONS

Section 4.1 Notices, Demands and Communications between the Parties

Formal notices, demands and communications between the City and the Developer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City and the Developer, as designated in Sections 1.4 and 1.5 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 4.1.

Section 4.2 Conflicts of Interest

a. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested.

b. The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

Section 4.3 Nonliability of City Officials and Employees

No member, official, employee or consultant of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or to its successor, or on any obligations under the terms of this Agreement.

Section 4.4 Approvals

Approvals required of the City or the Developer shall not be unreasonably withheld.

ARTICLE 5 ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

Section 5.1 Integration

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Site.

Section 5.2 Waivers; Amendments

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Developer. This Agreement and any provisions hereof may be amended by mutual written agreement by the Developer and the City.

DEVELOPER

SOBRATO DEVELOPMENT COMPANY #871

Dated: _____

By: _____
Sobrato Development Company #871
President

By: _____
Sobrato Development Company #871
Secretary/Treasurer

CITY

CITY OF SUNNYVALE

Dated: _____

By: _____
Director of Community Development

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

DRAFT